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File No. O. General clause 42

Legal DEPARTMENT

A. BRANCH

Subject:— Opinions under the B'Bay General clauses Act- 1904

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The question raised is whether an amendment of a draft rule made under section 109(1) of the Bombay Village Panchayats Act, 1933 and published for information of the persons likely to be affected thereby requires to be republished for the same purpose before it is finally published.

2. Section 105(2) of the Bombay Village Panchayats Act, 1933, provides that the rules to be made under sub-section (1) shall be subject to the condition of previous publication. Section 24 of the Bombay General Clauses Act, 1904 enacts that where by any Bombay Act, a power to make rules or by-laws is expressed to be given subject to the condition of the rules and by-laws being made after previous publication, then the provisions specified in clause (a) to (c) will apply. Clause (a) provides for publication of a draft rule for information of persons likely to be affected thereby. Under clause (b) the authority having power to make the rules or by-laws shall consider any objection or suggestion receiv from any person with respect to the draft rule or by-law and clause (c) provides for final publication of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication. It is clear from these provisions that it is competent for Government to modify or amend a draft rule made under section 109(1) of the Bombay Village Panchayats Act, 1933 before it is finally published under clause (c) of section 24 of the Bombay General Clauses Act. No modification or amendment of such draft rule already once published under clause (a) of section 24 would require to be republished inviting further objection or suggestion from the public, unless such modification or alteration radically changes the scope and character of the original proposal to such an extent as to make it inequitable that the parties affected should not be given a fresh opportunity of

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submitting their objections to the changed provisions. In the present ~~x~~ instance fresh publication as draft does not appear strictly necessary. However, if the administrative department considers it desirable, in view of the importance of the change involved, that people concerned should be given a fresh opportunity to put forth their objections, there would be no legal objection to adopting that course.

Sd. P. V. Rhea,
Remembrancer of Legal Affairs.

U.O.No.to the G.D.,No.2350, dated the 16th March 1942.

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1/3/56.

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Attention is invited to the Remembrancer of Legal Affairs' opinion No.3637, dated the 26th June 1934 (copy attached) in which the question now referred for consideration was fully considered. The expression "City of Bombay" has been defined by section 3(18) of the Bombay General Clauses Act, 1904, as meaning the area within the local limits for the time being of the ordinary original civil jurisdiction of the Bombay High Court of Judicature. Clause 11 of the Letters Patent of the Bombay High Court of 1865 provides that the ordinary original civil jurisdiction shall be such local limits as may, from time to time, be declared and prescribed by any law made by the Governor in Council and until such local limits shall be so declared and prescribed within the limits of the local jurisdiction of the said High Court of Bombay at the date of the publication of the Letters Patent. The Letters Patent of 1865 replaced the Letters Patent of 1862. Clause 11 of the Letters Patent of 1862 provided that such limits shall be the limits of the then (i.e. in 1862) local jurisdiction of the Supreme Court of Bombay. The Charter of the Supreme Court granted in 1823 refers to the town and island of Bombay as the limits of the original jurisdiction of the Supreme Court. No Act has yet been passed by the Bombay Legislature declaring and prescribing the limits of the ordinary original civil jurisdiction of the Bombay High Court. A Bill for this purpose was drafted in 1927 but was not proceeded with as there was no urgent necessity for the same. The result is that the ordinary original civil jurisdiction of the High Court has not been expressly defined anywhere. In accordance with long usage such jurisdiction is confined to the limits of the town and island of Bombay for the time

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being and this long usage has been recognised in judicial decisions. (Narayan Vithal vs. Jankibai, I.L.R.39 Bom.604 and I.L.R.58 Bom. 729). It is true that since the days of the Supreme Court the town and island of Bombay has undergone physical and geographical changes; but it is nevertheless a well recognised area. Bombay was formerly an island in the true sense of the term till it was joined to the Mainland by the Improvement and Port Trust reclamations. A considerable portion of the foreshore has been reclaimed on all sides and is now deemed to be part of the Town and Island of Bombay for municipal purposes. This is manifest from a reference to the old maps of Bombay. Attetion is invited to the map prepared by Captain Thomas Dickson in the years 1812-16 and reproduced by Mr. Edwardes in his book entitled "The Rise of Bombay". It will be seen that the Town and Island of Bombay comprises all the area bounded on the North by the Mahim Creek and Duncan's Causeway (now known as the Sion Causeway).and on the other three sides by the sea.

Sd. M.N.Moos,
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Remembrancer of Legal Affairs.

M.R.to H.D.(Spl.),No.2076, dated the 7th March 1942.

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1/5/56.